

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6816 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

=====

PRATAPSIKH P THAKORE

Versus

STATE OF GUJARAT

Appearance:

MR HJ NANAVATI for Petitioner No. 1
MR KM PARIKH AGP for Respondents No. 1 to 4.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 20/07/2001

ORAL JUDGEMENT

This petition has been filed for quashing and
setting the impugned order dated 10-8-1990 passed by the
Director of Higher Education - Respondent no. 2 herein

as it is illegal, discriminatory and violative of Article 14 of the Constitution of India and for a direction to the respondent no. 2 for treating the service of the petitioner rendered by him from 16-9-1968 till 20-7-1982 rendered in different institutions including the period of training from 26-6-1973 to 14-6-1976 as qualified service for purpose of fixation of pension and to hold that the petitioner's pay from Rs.2120/- to Rs.2000/- in the pay scale of Rs.2000-3500 as illegal erroneous and unconstitutional and fixation of pay made by the District Education Officer, Surat vide his order dated 14-2-2000 is just and proper and in accordance with law. Hence, the petitioner is entitled to draw regular salary and also for a direction to the aforesaid respondent to pay to the petitioner his regular salary on the basis of Rs.2120/- p.m. as has been paid at the relevant time and continue to pay the same together with due increments annually.

The contention of the learned counsel for the petitioner is that service period from 15-2-1984 to 16-11-1987 has been rightly considered as not continued and it could not have been continued. However, the petitioner is entitled to past service which was rendered by the petitioner in different institutions from 26-9-1968 to 20-7-1982 is required to be calculated and added as qualified service for the purpose of fixation of the pension. As per the Government Resolution dated 2-8-1985 Annexure-E, the respondent no. 2 has erroneously not included service as qualified service for fixation of the pension of the petitioner. Learned counsel for the petitioner has stated that the training period is also required to be included and considered as qualified service as per the relevant Government Resolution. It is also submitted by the learned counsel for the petitioner that the respondent no. 2 has committed an error on the face of the record. He has also informed the Court that the respondent No. 2 Director of Higher Education now has been redesignated as Commissioner of Schools and its office is situated at Dr. Jivraj Mehta Bhavan, Block No. 12, 2nd floor, Gandhinagar.

In the facts and circumstances of this case, I think it just and proper that the matter should be considered and decided by the respondent no. 2 - now redesignated as Commissioner of School, as per the relevant Rules, Government Resolutions and in accordance of law instead of making a fresh representation, I think it just and proper to direct the respondent no. 2 redesignated as Commissioner of Schools to treat the

petition as itself as a representation of the petitioner and the Commissioner of School - respondent no. 2 is directed to decide the same as per the relevant Rules, Government Resolution and in accordance with law, within a period of 3 months from the date of presentation of a certified copy of this order.

However, the petitioner would be at liberty to produce any additional material along with the copy of the writ petition to make it clear that the past service and training period is required to be considered as qualified service for calculation of the petitioner's pension for the purpose of refixation of of pension of the petitioner. The impugned order will be subject to the decision of the respondent no. 2 - redesigned as Commissioner of Police. This petition stands disposed of finally with the abvoe observation. D.S. is permitted.

-0-0-0-0-0-

/JVSatwara/